19 File No.

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File No.

Gen. 194 e.

Office of the R.L.A.

A revised draft notification in place of H.D. draft ✱ is sent herewith subject to the following observations :-

Preamble .- Reference to the provisions of the City of Bombay Police Act, 1902 , has been replaced by reference to the provisions of the Bombay Police Act, 1951 , as the latter Act is now to be shortly brought into force in the State of Bombay.

Rules 10, 11 and 12 in revised draft :- They have been adopted from the by-laws of a cantonment board made under the Cantonments Act, 1924 , for the regulation and control of eating houses .The H.D. may consider if the same are suitable for the purpose of the present rules.

Rule 17 in H.D. draft :- It has been omitted from the revised draft in view of the last para . of R.L.A.'s opinion No. 3211, dated 21st February 1951 to which attention is invited.In that opinion it has been stated that provisions on the lines of rule 12 of the Model Rules should not find a place in the rules to be made under rule 39A of the Bombay District Police Act in view of the provisions of section 42 of that Act. Section 42 of the District Police Act corresponds to section 37 of the Bombay Police Act, 1951 and therefore R.L.A.'s opinion referred to is equally applicable to the provisions contained in H.D. draft rule 17.

Rule 23 in H.D. draft:- The purpose which L.D. had in view in deleting the existing rule 17A was that such a rule would be superfluous in view of the provisions made in section 3(b) (✱(iv) of the Bombay (Removal of Social Disabilities) Act, 1946. Rule 23 has also been omitted from the revised draft, it ~~xxxxx~~ being extraneous to the purposes of the Bombay Police Act.

Rule 24 in H.D. draft:- It has been omitted from the revised draft as such a rule would be superfluous in view of the provisions contained in sub-section (2) of section 162 of the Bombay Police Act which specifies the circumstances in which a

licence granted under the said Act may be suspended or revoked by the Commissioner of Police.

Rule 26 in H.D. draft and rule 27 in revised draft :- The words " in his absolute discretion at any time to cancel or suspend any licence granted under these rules " occurring in rule 26 in H.D. draft has been omitted from the revised rule 27 in view of R.L.A.'s opinion No. 3983 , dated 12th April 1949.

Rule 28 in H.D. draft and rules 28 , 29 and 30 in revised draft.- Rule 28 in H.D. draft has been split up into three separate rules in the revised draft according to the kinds of documents for which fees are prescribed. As no fees are proposed to be prescribed for any permits by rules 28 in H.D. draft the words "or permits " occurring in that rule have been omitted from the revised rule 28 .

Under section 19 of the Bombay Shops and Establishments Act, 1948 , no restaurant or eating house can be opened earlier than 5 A.M. and closed later than 11 P.M. for service, while the closing hour fixed for theatres and other places of public entertainment, by section 26 of the Act, is 12 midnight. There is no provision in the Act under which a place of public entertainment can be kept open throughout day and night. Clauses (i)(d) and (i)(e) in rule 28 in H.D. draft have accordingly been deleted from the revised rule 28.

Id/- J.R.D.
dt/- 23/7/

Remembrancer of Legal Affairs.

U.R. to H. D. No. 11739 , dated the 24th July 1951.

V.V.K.

6/8/56/ SC.

Office of the R.L.A.

A revised draft Notification is sent herewith .

2. There is no conflict between the R.L.A.'s opinion No. 13013, dated the 13th August 1951 at pages 187-189 ante and the second opinion No. 4463, dated the 22nd April 1949 at page 41 of H.D. File No. 7220/5. From the facts given in the R.L.A.'s opinion No. 13013, dated the 13th August 1951 it will be seen that the Commissioner of Police, Bombay , had asked for previous sanction to certain rules which he proposed to make under clauses (f), (i),(g) (h) of subsection (1) of section 22 of the City of Bombay Police Act, 1902 , Government gave its sanction to all amendments except one namely amendment No. 3 at page 78 in respect of which it clearly indicated the nature of amendments which would be acceptable to Government even though Government directed the Commissioner of Police to submit a fresh draft thereof for sanction of Government. The Commissioner of Police through misunderstanding published the preliminary draft without showing it to Government. The R.L.A. held that an intimation by a letter to effect the change in the manner required by Government amounted to giving its sanction. In the second opinion namely No. 4463, dated the 22nd April 1949 . the facts were that under Government Resolution, Home Department, No. 7220/5, dated the 21st February 1949 certain model rules made by Government were brought to the notice of all District Magistrates and they were informed that the rules should be made applicable to all the Districts - Actually there was no proposal before Government to sanction the Rules in any District . The R.L.A. therefore held that the Government Resolution itself cannot be deemed to have conveyed the previous sanction of the Government in anticipation of District Magistrates' proposals.

While in the first case considered in R.L.A.'s opinion No. 13013, dated the 13th August 1951 , the question of sanction had actually arisen and in fact sanction was given by a letter, in the other case, Government had issued only a general directive for taking up the question of making rules under section 39A of the Bombay District Police Act, 1890. No draft rules in the form in which they were to be issued by the District Magistrate concerned were before Government and therefore no question of giving any sanction arose in the other case.

Id/- J.R
dt/- 27,--,

Remembrancer of Legal Affairs

U.R. to H.D.(Poll.) No. 17186, dated the 29th October 1951.

V.V.K. 7/7/56

SC.

Office of the R.L.A.

A revised draft notification is sent herewith.

2. The provisions of section 33(1)(x) of the Bombay Police Act, 1951, as such do not provide for the granting of a licence for the sale of tickets for admission to a place of public amusement. The statement made in the Schedule at p. 25 that a licence is hereby granted under the power vested in the District Magistrate under section 33(1)(x) of the Act is not correct. It is rule 1 of the Model Rules made by Government (and on the lines of which a District Magistrate would be making the rules) which provides for the obtaining of a licence from the District Magistrate in the form mentioned in the Schedule to the rules . It is sufficient therefore if reference to rule 1 is made at the beginning of the form of the incence and if it is provided that the licence is granted subject to the provisions of the Rules.

Id/- J.R.D.
dt/- 6/11/

Remembrancer of Legal Affairs.

U.R. to H.D. No. 17578 , dated 6th November 1951.

V.V.K. 6/7/56/
SC.

Office of the R.L.A.

A revised draft notification is sent herewith .

2. As regards the amendment at (3) in the draft at page 207 ante, the view taken by the Dy. Secretary, Home Department , is correct. The said amendment has, accordingly, been deleted from the revised draft

~~Is/xxxxx~~

Id/- J.R.D.
dt/- 27/11/

Remembrancer of Legal Affairs.

U.R. to H.D. No. 19075 , dated the 28th November 1951-.

V.V.K. 6/7/56/

SC.

Office of the R.L.A.

Revised draft model rules in place of Home Department draft are sent herwith.

2. Rule 1 in Home Department draft :- It has been omitted from the revised draft as it is unnecessary in view of the definition of the term "place of public entertainment "gáven ~~definition of the term "place of public entertainment "~~given in section 2(10) of the Bombay Police Act, 1951. However, the intention of Home Department to exclude from the purview of the rules places in which spirituous liquor, toddy or any intoxicating drug as defined by the Bombay Prohibition Act, 1949, is sold has been carried out by inserting new rule 23 in the revised draft stating that nothing in these rules shall apply to any scuh place.

3. Home Department draft rules 4 and 5(1) .- The object of these rules appears to be that a keeper of a place of public entertainment should not prevent Harijan or a member of any particular caste or community or class of persons from having access to the place of public entertainment and with that view a penalty is provided in the said rules. These rules are referrable to the provisions of article 15(2) of the Constitution :

Article 35 which appears under Part III of the Constitution provides that notwithstanding anything in this Constitution, Parliament shall have, and the Legislature of a state shall not have, power to make laws for prescribing punishment for those acts which are declared to be offences under this Part and Parliament shall, as soon as may be after the Commencement of this Constitution, make laws for prescribing pubishment for the acts referred to in sub-clause (ii) , Clause (b) of article 35 continues in force any law in force at the date of commencement of the Constitution which may relate to any of the matters refered to in clause (a) until altered or repealed or amended by Parliament . As a result of this provision the existing prohibition contained in model rule 3A sanctioned under Government Resolution, Home Department No. 6064 /5, dated

the 16th August 1948 and which may have been adopted by the District Magistrates as a rule under section 39A of the Bombay District Police Act, will continue to be effective, but no new rule on the same lines can be made by the District Magistrate under the Bombay Police Act as the object of the insertion of such a rule is to punish a person who contravenes the rules by cancelling or suspending his licence. It would not, therefore, be legally feasible now to make a rule on the said lines but the said rules may be kept alive by not superseding it by a fresh rule .

4. Sub-rule (2) of rule 5 in Home Department draft:- It has been omitted from the revised draft in view of the provisions contained in sub-section (2) of section 162 of the Bombay Police Act, which specifies the circumstances in which a licence granted under the said Act may be revoked by the competent authority .

5. Home Department draft rule 10 (revised rule 15). This rule provides that a licensee shall cause to be fixed in some conspicuous position out side the place of public entertainment, a wooden board of suitable size on which shall be painted conspeicuously in English and in regional languages the name of the keepar etc. Home Department should consider whether such board should necessarily have painted on it the name of the keeper of the place in English now that the Government has passed an order that the language prevalent in a district should be the regional language for transanction work upto a district level.

6. Rule 15 Home Department draft :- It has been incorporated in rule 2 of the revised draft (vide clause (4) F.

7. Home Department draft rule 22 (revised rule 21). This rule gives the discretion to the District Magistrate to cancel or suppend any licence granted under the rules. The Bombay High Court, in Criminal Application No. 655 of 1950 made by the petioner Shri B.J. Shrivastava under article 226 of the Constitution, has held that the decision of the

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District Magistrate under rule 15 of the rules made by the Districe Magistrate, Baroda, under section 39A of the Bombay District Police Act, 1890,(which rule corresponds to rule 22 of the Home Department draft), is of a judicial or a quasi-judicial nature and he cannot decide this without hearing the other side. It is, therefore, necessary, in view of this decision , to revise the rule so as to provide that District Magistrate shall give opportunity to the holder of a licence of showing cause why his licence should not be cancelled or suspended before it is cancelled or suspended.

8. Home Department draft rule 23 (revised rule 22). It will not be proper for the District Magistrate to assign all his functions under these rules to the Sub-Divisional Magistrate. The function of issuing a licence must necessarily be performed by a District Magistrate. But there is no objection if, for instance, the functions under revised rules 9, 11, and 20 are entrusted to a Sub-Divisional Magistrate , The referene to relevant rules may be made in revised rule 22.

9. It is presumed that these model rules will be adopted by a District Magistrate as rules to be made by him under clause (w) of sub-section (1) of section 33 of the Bombay Police Act, 1951 . Such rules will have to be made by him after obtaining the previous sanction of the State Government and after previous publication. (Please see section 33(2) and 33(6), Sub-section (6) of section 33 further provides that the rules are to be published by the authority making the rules by any two or more of the means specified in sub-section (6) of section 33 of the Act. It is only after the above procedure is followed that a District Magistrate will be competent to issue a licence as in the draft at page 51 ante as amended.

Id/- J.R.D.
dt/- 20/12/

Remembrancer of Legal Affairs.

U.R. to H.D. No. 20329 , dated the 20th December 1951.

V.V.K.7/7/
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